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O'DONNELL AND COOK WOULD SHIFT A NARROW MAJORITY;  
TOWARD A WELCOME RESURGENCE OF JUDICIAL RESTRAINT

**BODY:**

In two vitally important contests for the **Ohio Supreme Court**, we urge voters in the Nov. 7 general election to cast their ballots for Terrence O'Donnell and Deborah Cook.

Both are Republican nominees, but their party labels are not nearly as critical as their shared philosophy of judicial restraint. By contrast, success for their opponents would enhance the prospect that a majority of the seven-member court would continue on a controversial course of judicial activism, best illustrated in 4-3 decisions in two high-profile cases with profound ramifications for Ohioans' pocketbooks.

Incumbent Cook was in the minority of a court that, in one case, ruled that the state had failed to meet constitutional requirements for school funding and, in the other, overturned a **tort-reform** law.

O'Donnell, 54, a Cuyahoga County appeals judge, has no record on these issues but said in an interview: "My view is that judges should practice judicial restraint and resist the temptation to not follow the law."

He has the more formidable opponent in two-term Justice Alice Robie Resnick. Resnick, 61, is favored by trial lawyers and labor unions; O'Donnell is preferred by business and insurance interests.

Despite what is alleged by a barrage of questionable advertising, clearly intended to help O'Donnell but disavowed by him, voters need not conclude that Resnick has "sold her vote" to special interests.

By the same token, we urge them to assess O'Donnell's campaign on its own merits, not by the motives and behaviors of interest groups that have waged a shrill, mega-bucks campaign against Resnick.

We have endorsed Resnick in the past. But in this race, we prefer O'Donnell. Since Resnick in many areas has performed laudably, it is fair to ask why we

believe she should not be re-elected.

Bluntly, the school-funding and **tort-reform** cases were significant factors in our tilting against her, although we emphasize that it is not so much how she voted on those issues that aroused our concern, but her subsequent statements and conduct.

Last May 23, after Resnick proposed a summit of justices, legislators and Gov. Bob Taft to work out a solution to the schools funding case, we urged her to confine herself to interpreting laws, not making them.

In our view, such a meeting would have violated the principle of separation of powers: First, a Supreme Court justice helps draft a plan for the General Assembly to vote on, then rules on its constitutionality. How could she even have conceived such a thought?

Then, in August, the court demolished a 1996 **tort-reform** law. In writing the majority opinion, Resnick scolded the legislature, adopting a tone that raised many eyebrows. We do not necessarily quibble with the argument that portions of the **tort-reform** law went too far but, as our editorial at the time suggested, it was another indication that Resnick and some of her colleagues may yearn more to write laws than to interpret them.

We don't believe O'Donnell will succumb to that temptation. Since 1995, he has built a solid record on the 8th District Ohio Court of Appeals, which meets in panels of three to assess the work of trial courts. Previously, he served on the Common Pleas bench, beginning in 1980. In those roles, he developed a reputation as a stickler for following the rules.

The time is ripe for O'Donnell to move up to the state's top court.

In the other contest, voters should see to it that first-term incumbent Deborah Cook retains her seat.

Cook, 48, is challenged by Hamilton County Municipal Judge Tim Black in a contest that is being conducted with kid gloves and in the shadows, compared with the Resnick-O'Donnell race.

Yet the stakes also are high, since it is likely that Black, 47, a self-styled progressive, would fit comfortably into the majority activist block that has emerged in crucial rulings and whose power should be checked.

Cook is refreshingly more difficult to categorize - a justice who views herself as the most independent thinker on the bench.

In professional ability, the rivals are well matched. Both are thoughtful, mature

jurists who deserve to have emerged from any pack of potential statewide candidates.

But Cook has earned the voters' confidence and deserves a second term. Along with O'Donnell, she would help keep the state's highest court on a steady course.

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